



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/02/06	Bill No:	AB 2791
Tax:	Clean Vehicle Discount Program	Author:	Ruskin
Related Bills:			

This analysis will only address the bill's provisions that impact the Board.

BILL SUMMARY

This bill would do the following:

- Require the State Air Resources Board (ARB) to implement a Clean Vehicle Discount (CVD) Program that provides for a discount or surcharge for all motor vehicles based on the vehicle's emissions of greenhouse gases and criteria air pollutants, as specified.
- Authorize the ARB to contract with the Board of Equalization (Board) to perform its responsibilities under the CVD Program.

Summary of Amendments

Since the previous analysis, this bill was amended to, among other things, reorganize its provisions, add definitions, expand the provisions related to the surcharge and discount adjustments, and specify additional motor vehicles that would be exempt from the surcharge.

ANALYSIS

Current Law

Under existing law, a state and local sales and use tax is imposed on the sale or use of tangible personal property in this state, including motor vehicles. Currently, the total combined sales and use tax rate is between 7.25 and 8.75 percent, depending on the location in which the merchandise is sold. The Board does not collect any additional taxes or fees on the sale or use of motor vehicles.

The Board does, however, administer and collect the California tire fee on behalf of the California Integrated Waste Management Board (IWMB). Section 42885 of the Public Resources Code imposes a California tire fee of one dollar seventy-five cents (\$1.75) per tire on every person who purchases a new tire, as defined, until December 31, 2006, and one dollar fifty cents (\$1.50) per tire after that date. Commencing January 1, 2015, the fee will decrease to seventy-five cents (\$0.75) per tire.

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Proposed Law

This bill would add Article 3 (commencing with Section 43300) to Chapter 2 of Part 5 of Division 26 of the Health and Safety Code to establish a CVD Program.

Clean Vehicle Discount and Surcharge Program

After at least two public workshops, but no later than January 1, 2008, this bill would require the ARB, in consultation with those other agencies that the ARB determines are appropriate, to develop regulations to implement a CVD Program. In part, the regulations would establish a schedule of one-time clean vehicle discounts and one-time emissions surcharges for all motor vehicles eligible for inclusion in the program. The regulations would also include a system for timely reimbursement to automobile dealers of the exact amount of the discounts attributed to new motor vehicles sold by the dealer and a system for the transmittal of surcharges collected by the dealer.

The schedule of discounts and surcharges would take effect January 1, 2009, and apply to motor vehicles beginning with the 2009 model year. The ARB would be authorized to begin the first year of implementation of the discount and surcharge by delaying implementation of the discount portion of the program up to 30 days after the surcharge portion of the program goes into effect in order to ensure that adequate funds are available to fund the program. Annual adjustments to the schedule of discounts and surcharges would take effect on January 1 of each subsequent year and would apply to new vehicles of that model year.

The one-time discount or surcharge would apply at the point of sale to the price of the motor vehicle after applicable taxes are added. The one-time discount or surcharge would also apply to leased vehicles if the vehicle is leased for more than 24 months. Under such circumstances, the discount or surcharge amount could be amortized over the life of the lease.

This bill would also require the ARB to make available to the public the schedule of discounts and surcharges applicable in the year following their publication and whenever it is updated. The ARB would also be required to provide information to licensed automobile dealers about the CVD Program, including, but not limited to, the following:

- All the relevant details of the program, along with reasonable assistance in their efforts to comply with the program.
- Modification of the air pollution label that is required to be displayed on new vehicles sold in the state, pursuant to Section 43200.1 to include specific information on the applicable clean vehicle discount or emissions surcharge.

This bill would authorize the ARB to contract with the Board to perform its responsibilities under the CVD Program.

Discount and Surcharge Basis

This bill provides that the ARB would be required to calculate the discount or surcharge to be applied to any motor vehicle subject to the program based on the vehicle's emissions of greenhouse gases and criteria air pollutants, compared to the emissions of all vehicles of the same model year that are subject to the program. The ARB would be

authorized to adjust discounts and surcharges based upon projected sales of a motor vehicle in order to ensure that the program will be self-financing.

This bill would also require the ARB to create a zero-band that encompasses vehicles that are assigned neither a surcharge nor a discount, which would include the middle of the linear scale and between 20 and 25 percent of the fleet of a given model. Vehicles that would have otherwise been assigned a discount or surcharge of less than one hundred dollars (\$100) would become part of the zero-band category.

The maximum discount and surcharge would not be less than two thousand dollars (\$2,000), and no discount or surcharge shall exceed the lesser of two thousand five hundred dollars (\$2,500) or the amount of the sales tax on the purchase price of the motor vehicle.

The schedule of discounts and surcharges would be designed to ensure that the program will be self-financing and will generate adequate revenues to do all the following:

- Fund the cost of all discounts associated with the program.
- Fund all administrative costs associated with the program.
- Provide for a reserve within the program equal to 20 percent of estimated discounts to ensure the CVD Account will have a positive balance at the end of each fiscal year.

Appropriate adjustments to the surcharges and discounts would be required annually, based on recent and anticipated changes in motor vehicle sales and to ensure that the program continues to generate adequate revenues to meet the requirements to maintain a self-financing program.

The Department of Finance (DOF) would be authorized to direct the ARB at any time to adjust the schedule of discounts and surcharges so that, in DOF's determination, an adequate balance is maintained in the CVD Account to satisfy the requirements of a self-financing program. The DOF would also be authorized to direct the ARB to reduce or increase the size of the reserve, as specified, if it determines that the 20 percent reserve requirement is either excessive or inadequate to ensure that the CVD Account will have a balance at the end of each fiscal year.

Financial Provisions

This bill would create the CVD Account, which would be administered by the ARB. The funds collected from emissions surcharges would be credited to, and clean vehicle discounts would be debited from, the CVD Account. Moneys in the fund would be continuously appropriated to the ARB without regard to fiscal year to fund the clean vehicle discounts and to otherwise administer the CVD Program.

The bill also provides that any expenses related to the implementation of the CVD Program that are paid from the General Fund must be repaid with interest from the CVD Account.

Included Vehicles

This bill provides that all 2009 model year and all subsequent model year passenger vehicles and light-duty trucks that are subject to regulation pursuant to Section 43018.5¹ would be subject to the CVD Program, except as otherwise provided.

Also subject to the surcharge would be new vehicles purchased outside California by a person who is a California resident at the time of purchase if the resident returns to this state and registers the vehicle in this state within six months of purchase, if that vehicle would have otherwise been assigned a surcharge. The ARB would be required to cooperate with the DMV to develop and implement procedures to collect the surcharge for these new vehicles purchased in another state.

Exemptions from the CVD Program would include the following:

- Motor vehicles purchased by small businesses, as defined in Section 14837 of the Government Code, for work-related purposes.
- Vehicles that are purchased by the state for use in official state business.
- Emergency vehicles purchased by any local agency.
- Paratransit and other motor vehicles designed or modified specifically for the purpose of transporting disabled persons.
- Motor vehicles purchased by low-income residents of the state, to be defined by the ARB in regulations adopted pursuant to this measure.

This bill would also exempt motor vehicles that meet both of the following:

- The motor vehicle's primary exhaust is identified by the Office of Environmental Health Hazard Assessment as a chemical that causes cancer.
- The motor vehicle is not subject to a state-mandated inspection and maintenance program.

If a motor vehicle is not identified as an exempt vehicle by the ARB, but the purchaser of the vehicle believes the vehicle qualifies for an exemption, the purchaser would be required to pay the surcharge at the time of sale and submit an application to the ARB certifying that the vehicle qualifies for the exemption. The ARB would be required to notify the applicant within 90 days of receipt of the application of its determination of whether an exemption will be granted. If the ARB determines that the vehicle qualifies for an exemption from the surcharge, the ARB would reimburse the applicant for the value of the surcharge from the CVD Account.

The ARB would be required to prepare and make available to automobile dealers and to the public an application for use by motor vehicle purchasers seeking reimbursement for a surcharge paid for an exempt vehicle, as described.

Miscellaneous

The provisions of this bill would become effective January 1, 2007.

¹ Requires the ARB to develop and adopt regulations that achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions from motor vehicles.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Union of Concerned Scientists and is intended to encourage automobile buyers to purchase cleaner vehicles and to encourage manufacturers to offer more low-emitting vehicles to California consumers.
2. **The May 2, 2006, amendments** reorganize the provisions of the bill, add definitions, expand the provisions related to the surcharge and discount adjustments, and specify additional motor vehicles that would be exempt from the surcharge.
3. **What responsibilities would the ARB contract with the Board to perform?** This bill would authorize the ARB to contract with the Board to perform the ARB's responsibilities under the CVD Program. However, the ARB's responsibilities under the CVD program are not limited to the collection of the surcharge. The ARB's responsibilities include, in part, the development of regulations to implement the CVD Program, modifying the air pollution label that is required to be displayed on new vehicles sold in the state, and calculating the amounts of the discount or surcharge by using a continuous linear schedule. Each of these ARB responsibilities is outside the Board's area of expertise of revenue collection. As such, this bill should be amended to clarify that the ARB is authorized to contract with the Board to administer and collect the discount and surcharge.
4. **The Board's authority to collect.** This bill should be amended to specify that if the ARB were to contract with the Board to administer and collect the discount and surcharge, the Board is authorized to administer the discount and surcharge pursuant to the Fee Collection Procedures Law. The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. The Fee Collection Procedures Law was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law. Accordingly, the following language is required:

43303. (d)(1) If the state board contracts with the State Board of Equalization to administer and collect the discount and surcharge pursuant to the Clean Vehicle Discount Program, the State Board of Equalization shall administer and collect that fee and discount pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). The State Board of Equalization may prescribe, adopt, and enforce regulations to carry out this article, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

The bill must also specify a due date for the surcharge. Board staff is willing to work with the author's office in drafting appropriate amendments.

5. **Establishing discount and surcharge program by regulation could be problematic to administer.** Based on past experience, Board staff has found it difficult to administer tax and fee programs that are established by regulation adopted by another state agency. Since the Board has very limited control over such regulations, language adopted imposing a tax or fee or identifying specific products subject to the tax or fee may not be consistent with the Board's administration of other tax and fee programs. This could make it difficult to administer the program if the regulations are lacking definitions or other necessary provisions, or could result in a lawsuit that would have to be defended by the Board. Therefore, if the ARB intends to contract with the Board to administer and collect the discount and surcharge, the bill should be amended to include language imposing the surcharge, allowing for a discount, and specifying upon whom the discount and surcharge would apply (automobile dealer or purchaser) rather than outlining the intent of the program as a guide to establishing regulations.

The Board administers a few tax and fee programs in which the tax or fee rate is determined by another agency based on criteria set forth in law, which is not problematic as long as there is sufficient time to implement any tax or fee adjustments. As such, adopting by regulations a schedule of one-time discounts and surcharges for each motor vehicle eligible for inclusion would not be problematic for the Board if the bill is amended to provide the Board at least 90 days to implement any adjustment to the amounts.

6. **This bill is not consistent with the application of use tax for vehicles purchased in another state.** This bill would impose a surcharge upon new vehicles purchased in another state by anyone who is a California resident at the time of purchase *if the resident returns to this state and registers the vehicle in this state within 6 months of purchase*, if that vehicle would have otherwise been assigned a surcharge. It appears that such a surcharge would be collected by the DMV at the time the vehicle is registered in this state.

Under the Sales and Use Tax Law (operative July 1, 2006) and Board regulations, a vehicle purchased by a California resident is presumed to have been purchased for use in California and is subject to the California use tax. Also, a vehicle purchased by a nonresident is presumed to have been purchased for use in California if it enters this state within the first 90 days of ownership. These transactions are subject to the tax unless all of the following occur:

- The purchaser takes title to and possession of the vehicle while it is out of state;
- The purchaser makes the first functional use of it outside the state; and
- The purchaser uses it out of state *for more than 90 days* before the vehicle first enters California.

Under Regulation 1620, *Interstate and Foreign Commerce*, in determining the 90-day period of use outside California, the time is not counted when the vehicle was in shipment, or in storage for shipment, to California.

If the vehicle is purchased outside California and is first functionally used outside California but enters the state within the first 90 days of purchase (exclusive of time of shipment or storage for shipment to California), the vehicle is presumed to have been purchased for use in California unless it is used or stored outside the state

more than 50 percent of the time during the six-month period immediately following the first entry into California.

The applicable use tax is remitted to the DMV at the time the vehicle is registered in this state, which would be the same method of collection of the surcharge for vehicles purchased outside this state by a California resident. However, the surcharge would only apply to a California resident (the use tax could apply to both a resident and nonresident) and would be imposed based upon different timing rules than the use tax. Therefore, it should be noted that collection of the surcharge under such circumstances could be confusing to both the DMV and the vehicle owner, which could lead to collection errors.

7. Other technical concerns. In order to avoid any ambiguity with administration of the discount and surcharge, the following amendments should be considered to address Board staff concerns which include, in part, the following:

- Would the discount or surcharge apply to sales of used cars upon which a discount or surcharge was never applied? For example, if a resident of another state purchases a 2009 model year vehicle, moves to California and subsequently sells that vehicle to a California resident in this state, would the discount or surcharge apply to that sale? It appears from reading the findings and declarations that the intent is for the surcharge and discount only apply to new vehicles. As such, the bill should be amended to clarify this intent.
- The Fee Collections Procedures Law allows for the refund or credit for amounts paid more than once or erroneously or illegally collected or computed, but would not allow for the discount reimbursement amount to be given to an automobile dealer. Therefore, if the ARB intends to contract with the Board to administer and collect the discount and surcharge, this bill should be amended to include appropriate administrative provisions to allow for a refund or credit of the discount.
- Would a California resident that purchases a vehicle in another state be eligible for a discount if the resident returns to this state and registers the vehicles in this state within 6 months of purchase, if that vehicle would have otherwise been assigned a discount?
- How would an automobile dealer report a discount or surcharge on a vehicle that is leased for more than 24 months? Since the discount or surcharge may be amortized over the life of the lease, would those amounts be reported to the collecting agency as amortized? Or would the automobile dealer be required to report the surcharge or claim the discount in its entirety upfront?
- This bill provides in Section 43308(b) that “[t]he state board shall make annual adjustments to the surcharges and discounts...” Without a specific date that the annual adjustments must be made, administration could be difficult if there is not adequate time to notify automobile dealers before the January 1 effective date. The bill should require that ARB provide annual adjustment information to the Board at least 90 days prior to the effective date in order to allow the Board adequate time to implement any adjustment to the surcharges and discounts.
- This bill provides in Section 43304(c) that “[t]he schedule of discounts and surcharges shall take effect January 1, 2009, and shall apply to motor vehicles beginning with the 2009 model” and “[t]he schedule of discounts and surcharges,

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as adjusted annually ..., shall take effect on January 1 of each subsequent year, and be applied to new vehicles of that model year.”

It is common practice for new model year vehicles to be sold during the prior calendar year. For example, 2007 model year cars are currently being sold during the 2006 calendar year. If a schedule of discounts and surcharges were to become effective January 1 of each year and apply to new vehicles of that model year, how would the surcharge or discount apply to new model motor vehicles that are sold prior to January 1? For example, would a discount or surcharge apply or not apply to 2010 model year vehicles sold prior to January 1, 2010?

8. **Legal challenges of any new fee/surcharge program might be made on the grounds that the fee/surcharge is a tax.** In July 1997, the California Supreme Court held in *Sinclair Paint Company v. State Board of Equalization* (1997) 15 Cal.4th 866 that the Childhood Lead Poisoning Prevention Act of 1991 imposed bona fide regulatory fees and not taxes requiring a two-thirds vote of the Legislature under Proposition 13. In summary, the Court found that while the Act did not directly regulate by conferring a specific benefit on, or granting a privilege to, those who pay the fee, it nevertheless imposed regulatory fees under the police power by requiring manufacturers and others whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating those products' adverse health effects.

Although this measure has been keyed by the Legislative Counsel as a majority vote bill, opponents of this measure might question whether the surcharge imposed is in legal effect “taxes” required to be enacted by a two-thirds vote of the Legislature.

COST ESTIMATE

This bill would not increase administrative costs to the Board because it only authorizes the ARB to contract with the Board to perform its responsibilities under the CVD Program. The ARB would be required to contract with the Board to perform administrative and collection functions related to discount and surcharge, and reimburse the Board for its preparation costs to administer that program as well as the ongoing costs for the Board's services in actually administering and collecting the discount and surcharge.

The Board would incur non-absorbable costs to adequately develop and administer a new discount and surcharge program if the ARB were to contract with the Board to administer and collect the proposed discount and surcharge. These costs would include registering automobile dealerships, developing computer programs, mailing and processing returns and payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. A cost estimate of this workload is pending.

REVENUE ESTIMATE

This measure does not specify the amount of the discount and surcharge, or the specific motor vehicles to which the discount or surcharge would apply. Accordingly, a revenue estimate can not be prepared.

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